

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELEANORA M. FAIRFAX and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 96-2153; Submitted on the Record;
Issued August 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of her federal employment.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof in this case.

This is the second appeal of this case. By order dated January 29, 1996, the Board remanded the case back to the Office of Workers' Compensation Programs. The Board found that the Office had not completed its initial analysis to determine whether any of appellant's allegations could be deemed compensable factors of employment pursuant to the Employees' Compensation Act. On May 1, 1996, the Office again denied appellant's claim on the grounds that appellant had not established that her alleged emotional condition occurred in the performance of duty.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity per se is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act. Nor is disability covered when it results from

such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.¹

In cases involving emotional conditions, the Board has held that, when working conditions are related as factors in causing a condition or disability, the Office must first as part of its adjudicatory function make findings of fact regarding which working conditions are deemed compensable factors of employment and which working conditions are not deemed factors of employment. Only if appellant has alleged a compensable factor of employment will the Office further review the medical evidence and evaluate the claim.²

On May 29, 1991 appellant filed a claim alleging that on October 26, 1988 she had sustained an emotional condition in the performance of her federal employment. Appellant's allegations do not concern her work duties, but mostly involve administrative or personnel actions taken by her employer. Appellant has alleged that on September 26, 1988 she received a letter of warning for failure to perform her supervisory duties as a casual coordinator; that she then filed an Equal Employment Opportunity (EEO) complaint and was thereafter retaliated against by her employer; that she was reassigned to supervise the records room; that the records room had a huge filing backlog and that she was not given enough time or workers to effectively reduce the backlog before an audit of the record room was conducted (that additional workers were only assigned to the records room after she was removed from her supervisory assignment); and appellant has alleged that following an improper audit of the records room, she was demoted. Appellant filed EEO and Merit Systems Protection Board (MSPB) complaints concerning management's audit of the record room and her demotion following her supervisory period in the records room. Appellant also alleged that management improperly scheduled her for two fitness-for-duty examinations and suspended her from work when she did not attend the second evaluation; denied her overtime work; that she was forced to take L.S.M. training; that a supervisor allowed another employee to use a special chair of appellant's on occasion; and that a supervisor spoke to her about her attendance record. Although administrative and personnel matters are generally related to the employment, they are functions of the employer and not duties of the employee. Coverage under the Act may only be afforded for administrative functions of the employer if the claimant establishes that the employer erred or acted abusively in carrying out its administrative function.³ There must be evidence that the employing establishment acted unreasonably in its administrative capacity.⁴ In the present case, appellant has not submitted sufficient corroborating evidence establishing that the administrative actions she alleges caused her emotional condition were in fact unreasonable, such that the employer erred or acted abusively in its administrative capacity. Rather, a January 17, 1990 decision from the MSPB affirmed the employing agency's demotion of appellant for her failure to perform her duties as supervisor of the records room. While the findings of other agencies are not determinative of findings to be made pursuant to the Federal Employees' Compensation Act, the

¹ *Elizabeth Pinero*, 46 ECAB 123 (1994).

² *Leroy Thomas, III*, 46 ECAB 946 (1995).

³ *Raul Campbell*, 45 ECAB 869 (1994).

⁴ *Alfred Arts*, 45 ECAB 530 (1994).

Board may independently review factual findings made by other agencies. The Administrative Judge in the MSPB determination made factual findings that appellant's own refusal to perform filing work in the records room contributed to the her failure to address work performance in her supervisory capacity. As such, there is no evidence of record to support appellant's allegations that her employer acted unreasonably towards her.

Appellant also alleged that she was afraid she would be fired from her job. The Board has held that fear of reduction-in-force, a feeling of job insecurity, or fear of losing the job or of demotion, does not constitute a personal injury in the performance of duty.⁵ Such fears are self-generated and do not arise from the actual performance of job duties and are therefore not in and of themselves compensable factors of employment under the Act.

Finally, appellant has also alleged that on July 1, 1992 she was assigned to work under a supervisor for whom she had previously worked and whom she felt had "harassed" her. Appellant became distraught over this reassignment and quit her position. On March 9, 1993 an Unemployment Compensation Board found that appellant had a compelling reason to quit her position and that she was therefore entitled to unemployment benefits. The jurisdiction of the Office and the Board extends to the determination of performance of duty and disability under the Act. The findings of other administrative agencies are not determinative with regard to proceedings under the Act.⁶ As appellant has not submitted the necessary corroborating evidence to establish "harassment" or any unreasonable action by her employer, the Board is unable to discern the factual basis for the Unemployment Commission's finding that appellant was justified in quitting her employment. Appellant has therefore not submitted the necessary factual evidence to establish a compensable factor of employment in this case.

The decision of the Office of Workers' Compensation Programs dated May 1, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 18, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Martha L. Watson*, 46 ECAB 407 (1995).

⁶ *Donald E. Ewals*, 45 ECAB 111 (1993).